

Comments on the California Performance Review

By Sonia Arrison
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The recently released California Performance Review (CPR) contains a number of excellent recommendations and The Pacific Research Institute (PRI) applauds the efforts of everyone involved in working towards a more prosperous and healthy Golden State. PRI is a non-partisan think tank based in San Francisco that focuses on finding solutions to important public policy problems.

My area of expertise at PRI is technology policy, and I have noticed that the CPR made some recommendations on the use of open source software. PRI takes no formal position on whether proprietary or open source software is better. Indeed, we recognize that each system has distinct pros and cons. What I would like to point out to the Commission is that the section of the CPR discussing open source software appeared to over-emphasize the positives and almost completely ignore the potential problems and hidden costs of such a system.

Open source software is often free of charge, but it can be difficult to use and support costs are not free. Time spent on tech problems because of difficulty in use, as well as the actual support costs should be more closely examined. Also, because many different people can modify open source software, special concerns arise, such as the intellectual property questions that came to light in the SCO case (article attached).

I have attached two articles that deal with the issues I raise above and would be happy to comment in more detail at a later time if requested.

CAPITALISM MAGAZINE

IN DEFENSE OF INDIVIDUAL RIGHTS

Is the Penguin Contaminated?

by Sonia Arrison (May 26, 2003)

Article website address: <http://www.capmag.com/article.asp?ID=2808>

Summary: Since open-source products can be modified by anyone, how does the community make sure that their products don't contain, by accident or purpose, someone else's intellectual property?

[CAPMAG.COM]If there's one thing the open-source community is known for, it's chutzpah. In a recent online petition, more than 1500 Linux users told the SCO Group, which owns intellectual property rights to key components of the Unix operating system, to sue them.

This show of bravado is in reaction to letters the SCO Group sent last week to companies around the world who use the Linux operating system, proud bearer of a penguin logo. The letters warned that corporations could face legal liability for using Linux without a license from SCO. SCO believes that Linux, which is open source and free, contains unauthorized portions of proprietary Unix code.

SCO President Darl McBride explained, "we have an obligation to our shareholders to protect our intellectual property and other valuable rights." And this isn't the only action the company has taken in an effort to enforce those rights.

In March, SCO sued IBM for \$1 billion, alleging that Big Blue purposefully transferred bits of Unix into Linux in order to "destroy the economic value of Unix, particularly Unix on Intel, to benefit IBM's new Linux services business." IBM rejects these claims, but regardless of the outcome, it brings up some interesting challenges for the open source community.

Open-source proponents claim that their products, like Linux, are more flexible and less "buggy" than proprietary systems like SCO's Unix or Microsoft's Windows. While this claim is arguable, the controversy over intellectual property highlights a serious concern. Since open-source products can be modified by anyone, how does the community make sure that their products don't contain, by accident or purpose, someone else's intellectual property?

Some activists argue that the open-source community can police itself with multiple programmers on the lookout for unauthorized code. But if the responsibility doesn't actually lie with designated individuals, it's easy to see how that idea could quickly go awry.

Others, such as Gartner's George Weiss, suggest that companies who opt to use open source should "have an internal process, possibly with advice from their legal departments, to perform due diligence on the nature and origin of open source code for possible infringements of patents."

But if companies have to hire a bunch of lawyers to verify that they haven't broken any laws in using a computer program, it makes proprietary software start to look pretty good. That brings up an issue that open-source evangelists tend to ignore - that fewer bugs and greater flexibility are only two of the features users look for when selecting their tools. Cost, support,

usability, and now legal safety are also part of the equation.

It hasn't yet been revealed exactly which part of Linux SCO believes is copied from Unix, but in a recent interview with Linux Journal, SCO representative Chris Sontag said that in "a couple of weeks" SCO will show their proof to "independent experts."

While the entire community is waiting for evidence to back up SCO's claims, some have speculated that SCO's legal maneuvers are a strategy to make itself a target for acquisition. If that's the case, it wouldn't be the first time that players in the software industry attempted to use the courts to gain advantage in the marketplace. According to many, that was the crux of the Microsoft antitrust case.

SCO denies that its intellectual property claims have anything to do with a desire to be bought. To bolster their argument, they list quotations from Linux leaders on their web site. A quote from the Free Software Foundation's Richard Stallman says, "Linux is a copy of Unix. There is very little new stuff in Linux."

Stallman has since told *Wired News* that the comment was taken out of context and that he was actually quoting another developer's comments, but it does go to show that SCO isn't alone in thinking that Linux might be contaminated.

Whatever the final outcome of this controversy, it's likely that most companies will now view open-source products with a more cautious eye. This is a call to programmers to be more vigilant in checking code, but one wonders if it will be heard.

After all, in scanning the online petition, one can't help but be struck by the many comments such as "get your hands off my linux you damn, dirty, corpo-apes!!" and worse. These words suggest we can expect defiance, not cooperation, on serious issues like intellectual property from the open-source community, at least in the near future.

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I N D E F E N S E O F I N D I V I D U A L R I G H T S

Open Source Socialism

by Sonia Arrison (October 5, 2002)

Article website address: <http://www.capmag.com/article.asp?ID=1927>

Summary: The pressing question is not whether open source can make its creators money, or its purported advantages over proprietary software. The current issue is whether government should be used to force an increase in open source deployment.

[CAPMAG.COM]At a recent Stanford University lecture, open source proselytizer Bruce Perens encouraged students to get involved in the open source political movement. A few folks were enthused, but many seemed confused by how a method of software production and distribution can ignite such activism.

Open source software products are usually free of charge and are created and altered by many different individuals. The Linux operating system, which can be used instead of Microsoft Windows, is an example of an open source product. Linux is popular with many technical folks because of its quality, but not all of them have political feelings about it.

Indeed, there would have been much less confusion if Perens had given his talk to a political science or sociology class where students regularly consider terms like "equity," "empowerment," and "social contracts." It will clearly take more time to incite electrical engineering and computer science students, let alone the masses.

Perens bragged about his notoriety from creating the "electric fence," a free, sophisticated bug finder for Linux and by helping to create the Debian project - a free operating system that eventually went with NASA into space. He donated much of his personal time to these projects and, in his own words, was also "stealing time from Pixar to work on Linux." His was a story of toiling at boring jobs so that he could serve a higher purpose: to create something that everyone could use and appreciate at no charge. But this idealism didn't resonate with everyone.

"How can I make a living if everyone is using free software?" asked one student. That's a good question, and Mr. Perens didn't offer much of an answer. There is some employment in the open-source market (in service and support), he said, and he also argued that some forms of proprietary software wouldn't go away.

For instance, Perens argued that Intuit can relax because "no one will ever make an open source version of TurboTax." Apparently, this product doesn't have enough sex appeal for the open source community.

But the pressing question is not whether open source can make its creators money, or its purported advantages over proprietary software. The current issue is whether government should be used to force an increase in open source deployment. A good deal of the frenzy is a reaction to the success of Microsoft.

Perens's movement, the "Sincere Choice" platform, was founded, he says, in response to an industry group called "Software Choice," which argues for merit-based software purchasing decisions and is supported in large part by Microsoft. For many, Microsoft's problem is that it makes successful products and doesn't want to co-operate with competitors.

While there have been many responses to this grievance, including the famous antitrust trial, there is only one answer for those wanting to change things in the long run: make a better and more enticing product than Microsoft.

Microsoft has market power because it creates products that satisfy technology needs at the right price. If the open source community's products better satisfy those needs at a better price, then it shouldn't be necessary to legislate the use of open source in government departments, as some California activists suggested in August. It also shouldn't be necessary to legislate smaller items like the exact parts of a state's information technology (IT) infrastructure that must remain open, as Perens wants to do.

If a government agency chooses to use an open or mixed system for efficiency and cost reasons, that is fine. But forcing the taxpayer's IT budget to favor one type of system over another for purely political reasons is wrong and antithetical to the spirit of the open source community.

Many examples, such as California's recent Oracle scandal, show that governments don't always make the right decisions when it comes to technology procurement issues. Legislating government's choices in an effort to push one type of software ahead of another is just as bad.

--Made available through TechCentralStation.com

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